

³ The Board notes that, following the September 19, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of total disability commencing December 15, 2016 causally related to her accepted employment injury.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On December 4, 2015 appellant, then a 44-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained impingement syndrome, rotator cuff tendinitis, calcific tendinitis, and bursitis of the right shoulder caused by factors of her federal employment, including repetitive activities while handling mail and heavy parcels during the prior 15 years. She stopped work on November 30, 2015.

On October 12, 2016 OWCP accepted appellant's claim for the condition of calcific tendinitis of the right shoulder.

In a November 14, 2016 report, Dr. John E. Samani, a Board-certified orthopedic surgeon, noted a one-year history of right shoulder pain and constant clicking. On examination, he found severely restricted right shoulder motion in all planes, positive Neer and Speed's tests, and guarded Hawkins test. Dr. Samani obtained x-rays, which were within normal limits for age. He diagnosed right shoulder pain and noted work restrictions against lifting more than 10 pounds frequently or 20 pounds occasionally.

On December 23, 2016 appellant filed a notice of recurrence (Form CA-2a) claiming disability commencing December 14, 2016. She asserted that her right shoulder symptoms increased in late November 2016 due to working 12-hour days with heavy mail and parcel volume. Appellant stopped work on December 15, 2016 and claimed wage-loss compensation (Form CA-7) for temporary total disability commencing December 15, 2016.

In support of her claim, appellant submitted a December 14, 2016 report by Dr. Mark Karchon, an osteopathic physician Board-certified in family practice, noting a worsening of her right shoulder pain as she had been "doing a lot more at work" carrying packages and mail. On examination, Dr. Karchon observed extremely limited right shoulder range of motion. He held appellant off work for four weeks pending reevaluation.

In a development letter to appellant dated January 12, 2017, OWCP provided the definition of a recurrence of disability. It advised appellant of the type of factual and medical evidence necessary to establish her claim, provided a questionnaire for her completion, and afforded her 30 days to submit additional evidence.

In a January 16, 2017 report, Dr. Karchon noted that a January 11, 2017 magnetic resonance imaging (MRI) scan demonstrated swelling and inflammation in several shoulder

⁴ *Order Remanding Case*, Docket No. 18-1743 (issued August 15, 2019).

tendons, with severe arthritis and spurring of the acromioclavicular (AC) joint impacting the supraspinatus tendon beneath it, causing appellant considerable pain.⁵ He held her off work for three weeks pending additional evaluation.

In a report dated January 23, 2017, Dr. Samani held appellant off work indefinitely pending surgery. He prescribed a rigid immobilization arm brace.

On February 28, 2017 Dr. Samani performed OWCP-authorized right shoulder arthroscopic decompression, extensive debridement of glenohumeral joint with debridement of labrum and partial rotator cuff tears, partial claviclectomy performed through a small anterior incision, distal 8 millimeter removed. He prescribed physical therapy.⁶ Dr. Samani held appellant off work through May 6, 2017.

In a March 29, 2017 report, Dr. Thomas Perkins, a Board-certified orthopedic surgeon, prescribed physical therapy. He diagnosed status post right shoulder arthroscopy with decompression and partial claviclectomy.

By decision dated May 26, 2017, OWCP denied appellant's claim for recurrence of disability. It found that the evidence was insufficient to establish that her current right shoulder conditions were causally related to the accepted employment injury.

On May 1, 2018 appellant, through counsel, requested reconsideration. Appellant provided a statement summarizing her history of injury and treatment.

In a February 9, 2017 report, Dr. Karchon explained that he had held appellant off from work from December 14, 2016 through January 16, 2017 due to severe shoulder pain.

OWCP received a May 15, 2017 functional capacity evaluation signed by Matthew Mallman, an occupational therapist.

In a June 9, 2017 report, Dr. Samani prescribed a work conditioning program. He returned appellant to full-duty work effective July 1, 2017.

Dr. Karchon opined, in a letter dated February 28, 2018, that appellant's recurring right shoulder problems were "made worse by the repetitive motion of lifting [appellant's] arm up and over in order for her to deliver mail as well as carrying and lifting packages to the door." These repetitive motions caused chronic inflammation by causing the calcium deposits in the tendon to continuously rub on the soft tissue muscle and tendon, leading to inflammation, more calcium deposits, and further disability.

In a February 9, 2017 narrative report, Dr. Samani described the history of the employment injury and the requirements of her duties as a rural mail carrier. He further noted his findings on physical examination and the results of diagnostic testing including a pathophysiological analysis

⁵ A January 11, 2017 right shoulder MRI scan demonstrated bursal fraying and focal tendinosis of the anterior supraspinatus tendon, severe AC joint osteoarthritis with periarticular edema and prominent subacromial spurring, impingement, mild tendinosis of the long head of the biceps tendon,

⁶ Appellant participated in physical therapy treatment from March 7 to April 21, 2017.

of the cause of the accepted injury. Dr. Samani explained the necessity of the indicated right shoulder surgery as a result of her job duties. He advised that appellant remain off work until she is treated with surgery for the right shoulder.

By decision dated July 30, 2018, OWCP denied modification of its prior decision finding that the evidence did not contain a well-rationalized opinion from a qualified physician explaining whether the accepted condition had worsened such that appellant was disabled from work commencing December 15, 2016. Appellant appealed to the Board.

By order issued August 15, 2019,⁷ the Board set aside the July 30, 2018 decision and remanded the case for full consideration of all evidence of record. The Board noted that OWCP had authorized the February 28, 2017 right shoulder arthroscopy, but had not paid appellant wage-loss compensation for any period of postsurgical recuperation.

By decision dated September 19, 2019, OWCP modified the May 26, 2017 decision to the extent it “approved” disability related to OWCP’s authorized February 28, 2017 surgery. However, appellant’s claim for a recurrence of disability for the period December 15, 2016 through February 27, 2017 remained denied as Dr. Karchon’s December 14, 2017 report indicated that new work exposures had aggravated the accepted right shoulder condition.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness, without an intervening injury or new exposure to the work environment that caused the illness.⁸ Recurrence of disability also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁹ Absent a change or withdrawal of a light-duty assignment, a recurrence of disability following a return to light duty may be established by showing a change in the nature and extent of the injury-related condition such that the employee could no longer perform the light-duty assignment.¹⁰

When an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of proof to establish that the recurrence is causally related to the original injury.¹¹ This burden includes the necessity of furnishing evidence from a qualified

⁷ *Supra* note 4.

⁸ 20 C.F.R. § 10.5(x).

⁹ *Id.*

¹⁰ *G.L.*, Docket No. 16-1542 (issued August 25, 2017); *Theresa L. Andrews*, 55 ECAB 719, 722 (2004). *See also* *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹¹ 20 C.F.R. § 10.104(b); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 and 2.1500.6 (June 2013).

physician who concludes that the condition is causally related to the employment injury.¹² The physician's opinion must be based on a complete and accurate factual and medical history and it must be supported by sound medical reasoning.¹³ Where no such rationale is present, the medical evidence is of diminished probative value.¹⁴

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.¹⁵ The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify their disability and entitlement to compensation.¹⁶

ANALYSIS

The Board finds that the case is not in posture for decision.

Dr. Samani provided reports holding appellant off work commencing January 23, 2017 pending authorized right shoulder arthroscopy, performed on February 28, 2017. He also prescribed a rigid immobilization brace for the right arm to be worn prior to the surgery. In a February 9, 2017 narrative report, Dr. Samani described the history injury and the requirements of appellant's duties as a rural mail carrier. He explained the necessity of the indicated right shoulder surgery as a result of her job duties and advised that appellant remain off work until she is treated with surgery for the right shoulder.

The Board finds that, while Dr. Samani's January 23 and February 9, 2017 reports are not fully rationalized, he was consistent in opining that appellant's employment injury caused disability from work.¹⁷ Although the reports are insufficient to meet appellant's burden of proof to establish her claim for compensation, they raise an uncontroverted inference between her current condition and resultant disability from work and the accepted employment injury, and thus, it is sufficient to require OWCP to further develop the medical evidence.¹⁸

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.¹⁹ While the claimant has the burden of proof to establish entitlement

¹² *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *S.S.*, 59 ECAB 315, 218-19 (2008).

¹³ *Id.*

¹⁴ *G.L.*, Docket No. 19-0898 (issued December 5, 2019); *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

¹⁵ *See B.D.*, Docket No. 18-0426 (issued July 17, 2019); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹⁶ *Id.*, *Fereideoon Kharabi*, 52 ECAB 291 (2001).

¹⁷ *L.B.*, Docket No. 19-1621 (issued November 5, 2020).

¹⁸ *Id.*; *John J. Carlone*, 41 ECAB 354, 260 (1989).

¹⁹ *L.B.*, *supra* note 17; *Vanessa Young*, 56 ECAB 575 (2004).

to compensation, OWCP shares the responsibility in the development of the evidence and to see that justice is done.²⁰ Thus, the Board will remand the case to OWCP.

On remand OWCP shall prepare a statement of accepted facts setting forth the accepted employment injury and authorized surgery, and refer appellant to a second opinion physician in the appropriate field of medicine for an examination and a rationalized medical opinion as to whether her claimed recurrence of disability is causally related to the accepted December 4, 2015 employment injury. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 5, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²⁰ *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).